YENG CHONG REALTY BHD
v. EDWARD STANISLAUS DE SILVA & ORS

COURT OF APPEAL, PUTRAJAYA
MARIANA YAHYA JCA
HASHIM HAMZAH JCA
FAIZAH JAMALUDIN J
[CIVIL APPEAL NO: W-02(NCVC)(W)-1314-08-2023]
19 NOVEMBER 2024

Abstract – *(i) When the plaintiffs have duly performed their part of the sales and purchase agreement ('SPA'), but the defendant does not deliver vacant possession as required under the SPA, it is considered the first and the earliest clear and unequivocal threat to the plaintiffs' right to their land. It is at this specific point in time that the plaintiffs' cause of action has first arisen against the defendant. In such situation, time starts to run from the supposed date for the delivery of vacant possession as agreed by the parties. (ii) The court cannot override the provisions of the Limitation Act 1953 on equitable considerations. Even when the parties remain in contractual relationship, it does not mean that the period of limitation has not commenced. The statute of limitation has limited the time for the plaintiffs to enforce their rights to obtain judicial reliefs or remedies.*

LIMITATION: *Action – Right of action – Recovery of land – Whether 12 years from date on which right of action accrued – Whether cause of action arose upon non-delivery of vacant possession – Whether there was clear and unequivocal threat to right to land – When time began to run – Whether action time barred – Limitation Act 1953, ss. 6(1)(a), 9(1)*

LIMITATION: *Contract – Sales and purchase agreement – Vacant possession – Recovery of land – Action – Right of action – Whether 12 years from date on which right of action accrued – Whether cause of action arose upon non-delivery of vacant possession – Whether there was clear and unequivocal threat to right to land – When time began to run – Whether action time barred – Limitation Act 1953, ss. 6(1)(a), 9(1)*

The defendant was the registered owner of eight plots of land ('said land'). The defendant publicised its intention to develop the said land into a luxurious golf resort ('said project'). The plaintiffs entered into their respective sales and purchase agreements ('SPAs') with the defendant to buy the respective bungalow plots in the said project. The SPAs were executed between the parties for the sale and purchase of certain land plots and not for the purpose of housing development. Through the execution of the SPAs,

the plaintiffs and the defendant had agreed, among others, that the date for the delivery of vacant possession of the bungalow plots to the respective plaintiffs shall be upon the completion of the basic infrastructure works, in which case shall not be later than 36 months from the date of the SPAs. The date for the delivery of vacant possession had lapsed. After continuous demands, queries and complaints, there was still no delivery of vacant possession of the bungalow plots to the plaintiffs nor the surrender of the titles to the bungalow plots to the plaintiffs. The plaintiffs filed this action at the High Court against the defendant, claiming, *inter alia*, that there was a continuous breach of contract as vacant possession had yet to be delivered. The defendant, on the other hand, relied heavily on its pleaded defence that the plaintiffs' claims were statutorily barred. The Judicial Commissioner ('JC') found that the plaintiffs had proved their case against the defendant on the balance of probabilities. Aggrieved, the defendant appealed. The pivotal issue to be determined was whether the plaintiffs' action for the recovery of the respective bungalow plots against the defendant was time barred.

Held (allowing appeal)

Per Hashim Hamzah JCA delivering the judgment of the court:

(1) The plaintiffs' action against the defendant was an action for the recovery of land, namely the respective bungalow plots. The plaintiffs were seeking the court to declare their interest in the respective bungalow plots, the delivery of vacant possession and the surrender of the respective land titles. Since the plaintiffs' cause of action was for the recovery of land, the limitation period would be 12 years from the date on which the right of action accrued to them, according to s. 9(1) of the Limitation Act 1953. (paras 22 & 23)

(2) Under cl. 16(1) of the SPAs, the plaintiffs would be rightfully entitled to the vacant possession of their respective bungalow plots, not later than 36 months, from the date of their respective SPAs, provided that the plaintiffs had duly paid to the defendant all of the instalments up to date and performed other relevant obligations under the SPAs. When the plaintiffs had duly performed their part of the agreement, but the defendant did not deliver vacant possession as required under the agreement, this was the first and the earliest clear and unequivocal threat to the plaintiffs' right to their land. It was at this specific point in time that the plaintiffs' cause of action had first arisen against the defendant. In the face of the clear provisions of the SPAs, which expressly outlined the rights and obligations of the parties, the relevant cause of actions was more easily determined, and the conduct of the parties (especially the defendant) after that bore little significance in determining the plaintiffs' right of action. Time thus started to run from the supposed date for the

delivery of vacant possession of the bungalow plots as agreed by the parties in their respective SPAs, which the defendant had breached. (paras 36-42)

(3) It was unfortunate for the plaintiffs that the court could not override the provisions of the Limitation Act on equitable considerations. Even though the parties remained in contractual relationship, it did not mean that the period of limitation had not commenced. The statute of limitation had limited the time for the plaintiffs to enforce their rights to obtain judicial reliefs or remedies. (paras 43-45)

(4) The JC had erred in holding that the plaintiffs' earliest right of action to recover the respective bungalow plots accrued on 7 October 2020, *ie*, when the defendant filed its application to the High Court for leave to enter appearance and to file its defence against the plaintiffs' claim when there was evidence to show that the plaintiffs' right of action had accrued even earlier, *ie*, when the defendant failed to deliver vacant possession of the respective bungalow plots according to the terms of their respective agreements. The action filed by the plaintiffs in 2020 to recover the respective bungalow plots was time-barred. (para 46)

Case(s) referred to:

Bolo v. Koklan [1930] LR 57 IA 325 ***(refd)***

Credit Corp (M) Bhd v. Fong Tak Sin [1991] [1991] 2 CLJ 871; 1 CLJ (Rep) 69 SC ***(refd)***

Gan Yook Chin & Anor v. Lee Ing Chin & Ors [2004] 4 CLJ 309 FC ***(refd)***

Julian Chong Sook Keok & Anor v. Lee Kim Noor & Anor [2024] 5 CLJ 519 FC ***(refd)***

Majlis Peguam & Anor. v. Tan Sri Dato' Mohamed Yusoff Mohamed [1997] 3 CLJ 332 SC ***(refd)***

Nasri v. Mesah [1970] CLJU 85; [1970] 1 LNS 85 FC ***(dist)***

Ng Moh v. Tan Bok Kim & Anor [1968] CLJU 88; [1968] 1 LNS 88 FC ***(refd)***

Peng Bee Sdn Bhd v. Teoh Liang Teh & Ors [2000] 4 CLJ 825 CA ***(refd)***

The Great Eastern Life Assurance Co Ltd v. Indra Janardhana Menon [2005] 4 CLJ 717 FC ***(refd)***

UEM Group Bhd v. Genisys Integrated Engineers Pte Ltd & Anor [2010] 9 CLJ 785 FC ***(refd)***

Legislation referred to:

Limitation Act 1953, ss. 6(1)(a), 9(1), 22(1)(a)

For the appellant - Loh Siew Cheang, Chai Pei Xian & Yong Li Zen; M/s Cheang & Ariff
For the respondent - Viola Lettice De Cruz, Nur Atiqah Ahmad Ariff & Claudia Lynette Silva; M/s VL Decruz & Co

[Editor's note: For the High Court judgment, please see Edward Stanislaus De Silva & Ors v. Yeng Chong Realty Bhd (Formerly Known As Yeng Chong Realty Sdn Bhd) [2023] 9 CLJ 571 (overruled).]

Reported by Suhainah Wahiduddin

A

JUDGMENT

Hashim Hamzah JCA:

Introduction

B **[1]** For ease of reference, parties in the present appeal shall be referred as they were before the High Court.

[2] This is the defendant's appeal against the decision of the learned Judicial Commissioner ("JC"), who allowed the plaintiffs' claim after a full trial.

C **Background Facts**

[3] The defendant is the registered owner of the eight plots of land situated in the Mukim Ayer Panas, Daerah Jasin, Malacca ("the said land"). The defendant had obtained a loan from the Malaysian Building Society Berhad ("MBSB") in 1997 to purchase the said land. In return, the said land was D charged to MBSB as security for the loan granted to the defendant.

[4] Sometime in 1999, the defendant had publicised its intention to develop the said land into a luxurious golf resort known as Bandar Golden Valley Golf Resort ("the said Project") through the issuance of flyers, brochures and advertisements in newspapers. The said project was supposed E to be jointly developed with MBSB Development Sdn Bhd ("MBSBD").

[5] The plaintiffs entered into their respective sale and purchase agreements ("SPAs") with the defendant to buy the respective bungalow plots in the said project. These SPAs were executed between 20 April 1999 F and 20 April 2000, respectively.

[6] It is pertinent to note that the SPAs were executed between the parties for the sale and purchase of certain land plots and not for the purpose of housing development. Therefore, the SPAs were not contracts made in the prescribed statutory form under the Housing Development (Control and G Licensing) Act 1966 and the Housing Development (Control and Licensing) Regulations 1989.

[7] Through the execution of the SPAs, the plaintiffs and the defendant had agreed, among others, that:

H (i) the date for the delivery of vacant possession of the bungalow plots to the respective plaintiffs shall be upon the completion of the basic infrastructure works (cls. 1(b) and 13), in which case shall not be later than 36 months from the date of the SPAs (cl. 16);

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(ii) the defendant shall, at its own cost and expense, use its best efforts to obtain as expeditiously as possible the issue of the separate qualified document of title of the bungalow plots (cl. 11); and

(iii) the bungalow plots would be free of encumbrances upon the transfer of the titles of the said plots to the respective plaintiffs (cl. 3).

[8] The date for the delivery of vacant possession had lapsed between 20 April 2002 to 29 April 2003, respectively. Regardless, the plaintiffs had continued with their monthly installment payments to the defendant for their respective bungalow plots according to each of their SPAs. Some had paid in full, and some had not, but neither party had terminated the SPAs.

[9] After continuous demands, queries and complaints, there was still no delivery of vacant possession of the bungalow plots to the plaintiffs nor the surrender of the titles to the bungalow plots to the plaintiffs up to date.

[10] On 5 August 2020, the plaintiffs filed this action at the High Court against the defendant. The plaintiffs claimed that:

(i) there was a continuous breach of contract as vacant possession had yet to be delivered;

(ii) there was fraud on the part of the defendant, who never intended to fulfil its obligations under the respective SPAs;

(iii) there was unjust enrichment by the defendant, who had planted oil palm trees and benefitted from there instead of developing the land as per the SPAs.

[11] The defendant, on the other hand, relied heavily on its pleaded defence that the plaintiffs' claims were statutorily barred.

[12] The case went for a full trial. Twenty-two witnesses testified for the plaintiffs, and one witness, *ie*, the defendant's director, testified for the defendant. At the close of the case, the learned JC found that the plaintiffs had proven their case against the defendant on the balance of probabilities and ordered as follows:

(i) a declaration that the first to the 11th plaintiffs have a beneficial interest over their respective lands and the rest of the plaintiffs are entitled to the right *ad rem* over or right *in personam* against the defendant over the subject matter;

(ii) a declaration that the defendant is holding the respective bungalow plots as a bare trustee for the first to the 11th plaintiffs, respectively;

(iii) that the defendant delivers vacant possession of the respective bungalow piots to the plaintiffs within 14 days from the date of the judgment;

(iv) that the defendant applies for the division of the land as per the respective SPAs within 14 days from the date of the judgment;

(v) that the defendant pursues the status on a monthly basis until the issuance of the subdivision of land the respective individual titles for the bungalow plots;

(vi) that the defendant executes the respective transfer documents in favour of the plaintiffs within 14 days of the issuance of the individual titles of the bungalow plots;

(vii) general, aggravated and exemplary damages; and

(viii) interest of 5% on the judgment sum from the date of this judgment until full and final settlement.

[13] Aggrieved with the said judgment, the defendant filed this appeal.

The Law On Appellate Intervention

[14] It is a trite principle of law that an appellate court will not generally intervene with the decision of a trial court unless the trial court is shown to be plainly wrong in arriving at its decision.

[15] The 'plainly wrong test', as established in the Federal Court case of *Gan Yook Chin & Anor v. Lee Ing Chin & Ors* [2004] 4 CLJ 309; [2005] 2 MLJ 1 and affirmed in the Federal Court case of *UEM Group Bhd v. Genisys Integrated Engineers Pte Ltd & Anor* [2010] 9 CLJ 785, is a crucial principle in our legal system. The Federal Court in *Gan Yook Chin*'s case held that an appellate court will not generally intervene with the decision of a trial court unless the trial court is shown to be plainly wrong in arriving at its decision. The relevant excerpt is reproduced below:

> It is well settled law that an *appellate court will not generally speaking, intervene with the decision of a trial court unless the trial court is shown to be plainly wrong* in arriving at its decision. *A plainly wrong decision happens when the trial court is guilty of no or insufficient judicial appreciation of evidence*. (See *Chow Yee Wah &Anor v. Choo Ah Pat* [1978] 1 LNS 32; *Watt v. Thomas* [1947] AC 484; and *Gan Yook Chin & Anor v. Lee Ing Chin & Ors* [2004] 6 AMR 781; [2004] 4 CLJ 309.)
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> (emphasis added)

[16] Bearing this trite principle of the law in our minds, we turn to consider the issues raised in this appeal.

Issues

[17] The defendant raised several issues in its memorandum of appeal. However, we believe that the pivotal issue to be determined in the present case is whether the plaintiffs' action for the recovery of the respective bungalow plots against the defendant is time-barred.

Our Findings

[18] First and foremost, s. 6(1)(a) of the Limitation Act 1953 (Revised 1981) (Act 254) ("Limitation Act 1953") stipulates that:

> Section 6. Limitation of actions of contract and tort and certain other actions.
>
> (1) Save as hereinafter provided the following actions shall not be brought after the expiration of **six years from the date on which the cause of action accrued**, that is to say:
>
> (a) **actions founded on a contract** or on tort; ...
>
> (emphasis added)

[19] Secondly, s. 9(1) of the Limitation Act 1953 reads:

> Section 9. Limitation of actions to recover land.
>
> (1) No action shall be brought by any person **to recover any land after the expiration of twelve years from the date on which the right of action accrued to him**, or if it first accrued to some person through whom he claims, to that person.
>
> (emphasis added)

[20] In *Nasri v. Mesah* [1970] CLJU 85; [1970] 1 LNS 85; [1971] 1 MLJ 32, the Federal Court held that a cause of action founded on contract accrues on the date of its breach and a cause of action founded on any other right accrues from the date on which that right is infringed, or threat of its infringement.

[21] In order to determine whether the plaintiffs' action against the defendant is time-barred, the plaintiffs' cause of action against the defendant must be determined first.

[22] On this issue, we agree with the finding of the learned JC that the plaintiffs' action against the defendant was an action for the recovery of land, namely the respective bungalow plots. This can be seen in the plaintiffs' pleadings and their case throughout the trial. The plaintiffs are seeking for the court to declare their interest in the respective bungalow plots, the delivery of vacant possession and the surrender of the respective land titles. We refer to paras. 33 and 34 of the learned JC's grounds of judgment.

[23] Since the plaintiffs' cause of action is for the recovery of land, the limitation period would be 12 years from the date on which the right of action accrued to them. This is according to s. 9(1) of the Limitation Act 1953.

[24] Next, it is settled law that the question of when the right of action accrues is a question of fact. In *Credit Corp (M) Bhd v. Fong Tak Sin* [1991] [1991] 2 CLJ 871; 1 CLJ (Rep) 69; [1991] 1 MLJ 409, the Supreme Court speaking through Hashim Yeop A Sani CJ (Malaya) (as he then was) held as follows:

> As stated earlier *a cause of action is said to have accrued when there is in existence a person who can sue and another who can be sued, and when ail the facts have happened which are material to be proved to entitle the plaintiff to succeed*. In the present case on 18 June 1979 there was undoubtedly in existence someone who can sue, that is, the respondent. There was also undoubtedly some person in existence who can be sued, amongst them the appellant On the same date there was also in existence the facts to be proved by the respondent to entitle the plaintiff to succeed in the action.
>
> *The doctrine of limitation is said to be based on two broad considerations. Firstly there is a presumption that a right not exercised for a long time is non-existent. The other consideration is that it is necessary that matters of right in general should not be left too long in a state of uncertainty or doubt or suspense*.
>
> The limitation law is *promulgated for the primary object of discouraging plaintiffs from sleeping on their actions and more importantly, to have a definite end to litigation*. This is in accord with the maxim interest reipublicae ut sit finis litium that in the interest of the State there must be an end to litigation. The rationale of the limitation law *should be appreciated and enforced by the Courts*. "
>
> (emphasis added)

[25] Again, we refer to *Nasri*'s case, which is also a case where the right of action is for the recovery of land. The Federal Court in *Nasri*'s case, with reference to an abundance of authorities (including the Privy Council's decision in *Bolo v. Koklan* [1930] LR 57 IA 325 and its earlier decision in *Ng Moh v. Tan Bok Kim & Anor* [1968] CLJU 88; [1968] 1 LNS 88; [1969] 1 MLJ 46) concluded that the period of limitation began to run only from the first clear and unequivocal threat to the plaintiff's right to the transfer of the land.

[26] In particular, Gill FJ (as he then was), in delivering the judgment of the Federal Court, held as follows:

> *A "cause of action" is the entire set offsets that gives rise to an enforceable claim*; the phrase comprises every fact which, if traversed, the plaintiff must prove in order to obtain judgment (per Lord Esher M.R. in *Read v. Brown* (1888) 22 QBD 128 131). in *Reeves v. Butcher* (1891) 2 QB 590 511 Lindiey L.J. said:
>
> > This expression, 'cause of action', has been repeatedly the subject of decision, and it has been held, particularly in *Hemp v. Garland* LR 4 QB 509 511, decided in 1843, that *the cause of action arises at the time when the debt could first have been recovered by action. The right*

> *to bring an action* may arise on various events; but it has always been held that the statute runs from the *earliest time at which an action could be brought*.
>
> In *Board of Trade v. Cayzer, Irvine & Co* [1927] AC 610 617. Viscount Dunedin described "cause of action" as that which makes action possible. Now, what makes possible an action founded on a contract is its breach. *In other words, a cause of action founded on a contract accrues on the date of its breach*. Similarly, the right to sue on a contract accrues on its breach. In the case of actions founded on contract, therefore, time runs from breach (per Field J. in *Gibbs v. Guild* 8 QBD 296 302). *In the case of actions founded on any other right, time runs from the date on which that right is infringed or there is a threat of its infringement* (see *Bolo*'s case LR 571 A 74). It would seem clear, therefore, that *the expressions "the right to sue accrues", "the cause of action accrues" and "the right of action accrues" mean one and the same thing* when one speaks of the time from which the period of limitation as prescribed by law should run.
>
> For the reasons I have stated, the period of limitation in the present case can be said to have begun to run only *from the first clear and unequivocal threat to the plaintiff's right* to a transfer of the land ...
>
> (emphasis added)

[27] See also *Tan Swee Lan v. Engku Nik bte Engku Muda* [1973] 2 MLJ 187 (FC).

[28] In the present case, the learned JC found that the first clear and unequivocal threat to the plaintiffs' right over the bungalow plots only occurred at the time the defendant had denied and refuted the plaintiffs' claim by filing an application to the High Court for leave to enter appearance and to file its defence against the plaintiffs' claim, which was on 7 October 2020. The learned JC was of the opinion that the plaintiffs' cause of action would only arise then, and therefore, the plaintiffs' claim which was filed two months earlier on 5 August 2020 was not time-barred.

[29] In support of his findings above, the learned JC had also taken into consideration the defendant's conduct, that:

(i) the defendant had full knowledge of its financial dispute with MBSB, which affected the delivery of vacant possession of the respective bungalow plots to the plaintiffs;

(ii) when the dates for the delivery of vacant possession of the respective bungalow plots were due, there was not a single explanation from defendant to any of the plaintiffs, and thus, there was no clear and unequivocal refusal to deliver vacant possession of the respective bungalow plots to the plaintiffs;

(iii) the defendant did not respond to the demands and complaints from some of the plaintiffs;

(iv) to some of the other plaintiffs, the defendant responded by saying that the project was stalled; and

(v) the defendant still accepted payments from the plaintiffs unconditionally even after the project was abandoned in 2003.

[30] Before us, learned counsel for the plaintiffs submitted that the learned JC's finding was supported by Nasri's case in which the Federal Court held that there was no threat to infringe the right of the plaintiff to stand on his legal right under the agreement until the defence was filed.

[31] However, after perusing all of the appeal records, we disagree with the learned JC and the submission by learned counsel for the plaintiffs for the following reasons.

[32] We agree with learned counsel for the defendant that the facts in *Nasri*'s case can be distinguished from the facts in the present case.

[33] In *Nasri*'s case, the appellant claimed for specific performance of an agreement dated 5 June 1947 in which the respondent had agreed to sell to the appellant her land. The appellant had paid the respondent the agreed purchase price on the date of the agreement. The respondent had, on the same day, handed to the plaintiff the issue document of title in respect of the land. However, no document of transfer was executed due to the moratorium then in force. The respondent undertook to execute a valid and registrable transfer of the land to the appellant when the moratorium was lifted. The appellant went into occupation of the land, built a house and lived there with his family ever since. After the expiration of the moratorium period on 30 September 1949, the appellant had several times requested the respondent to execute a valid and registrable transfer of the land, but there was no response from the respondent. After the expiration of the moratorium period on 30 September 1949, the appellant had several times requested the respondent to execute a valid and registrable transfer of the land, but there was no response from the respondent. The action was commenced on 3 March 1967.

[34] In holding that the appellant's claim was not barred by limitation and that time began to run against the appellant from the date the defence was filed, Gill FJ (as he then was) found as follows:

> For the reasons I have stated, *the period of limitation in the present case can be said to have begun to run only from the first clear and unequivocal threat to the plaintiff's right to a transfer of the land*. The learned trial judge has stated in his grounds of judgment that if *Ng Moh*'s case [1969] 1 MLJ 46 was binding on him, then he would hold on the pleadings that the first dear

and unequivocal threat to the plaintiff's right to possession was the refusal to the first request after the expiration of the moratorium as alleged in the statement of claim. With respect, *there is not the slightest indication from the plaintiffs statement of claim that the defendant at any time clearly and unequivocally refused to sign a transfer. Not even in the defendant's statement of defence*, which of course the court is not entitled to look at, is there any mention of any refusal. As *there is no specific averment in the statement of claim as to when the first of the plaintiffs requests was made*, it would be a pure conjecture to say that such requests must have been made shortly after the lifting of the moratorium. There can therefore be no basis for the learned judge's finding that such request were refused by necessary implication.

The fact that the plaintiff chose not to lodge a caveat against the land until 1966 would seem to indicate that until then there was no threat to his right under the agreement. In this connection *it is significant that the first clear refusal by the defendant was contained in her letter of 14th October 1966* to which I have made reference earlier in my judgment. That letter, *however, was not in evidence at the trial*, although it has been included in the appeal record. Assuming that we are not entitled to look at it, we have to fall back on *the plaintiffs letter of 8th November, 1966 which he sent to the defendant care of another person. As there is no evidence that that letter reached the defendant*, the position would therefore appear to be that there never was any refusal by the defendant to carry out her obligations under the contract, in the circumstances, it may be argued that this action was premature, but that was not the stand taken by the defendant, *in any event, service of the writ on the defendant constituted notice of the appellant's intention to stand on his legal right under the agreement* (see *Tool Metal Co v. Tungsten Electric Co* [1955] 2 All ER 657), *and there was no threat to infringe that right until the defence was filed*. Whatever view I take of the case, it would seem clear that time did not begin to run against the plaintiff until shortly before the action was filed. It was therefore not barred by limitation.

(emphasis added)

[35] To summarise, based on the surrounding facts in *Nasri*'s case, there was no clear evidence before the Federal Court to show that there was a threat on the part of the respondent to infringe the appellant's right prior to the filing of the defence.

[36] On the contrary, the parties in the present case had made it expressly clear under cl. 16(1) of the SPAs that the plaintiffs would be rightfully entitled to the vacant possession of their respective bungalow plots not later than 36 months from the date of their respective SPAs, provided that the plaintiffs had duly paid to the defendant all of the instalments up to date and performed other relevant obligations under the SPAs.

[37] Evidence has shown that all of the plaintiffs had at least paid their instalments to the defendant up until the date when vacant possession was supposed to be delivered. In our view, when the plaintiffs had duly performed their part of the agreement, but the defendant did not deliver vacant possession as required under the agreement, this is the first and the earliest clear and unequivocal threat to the plaintiffs' right to their land. On a side note, the parties have also agreed that time was of the essence of the SPAs (cl. 25 of the SPAs).

[38] We hold that it is at this specific point in time that the plaintiffs' cause of action had first arisen against the defendant. We say this because, at this juncture, the plaintiffs may already opt to sue for liquidated damages for late delivery (cl. 16(4) of the SPAs), to terminate the SPAs for breach of contract and sue for damages, or to file an action for specific performance for the delivery of vacant possession.

[39] In our mind, in the face of the clear provisions of the SPAs, which expressly outline the rights and obligations of the parties, the relevant cause of actions is more easily determined, and the conduct of the parties (especially the defendant) after that bears little significance in determining the plaintiffs' right of action.

[40] In the case of *Peng Bee Sdn Bhd v. Teoh Liang Teh & Ors* [2000] 4 CLJ 825; [2001] 1 MLJ 1, Shaik Daud JCA (as he then was), in delivering the judgment of this court, held as follows:

> In the present appeal we agree with the learned counsel for the first to fourth respondents that time began to run from the notice dated 7 June 1982 following the inability of the first to fourth respondents to give vacant possession. The present action filed on 13 January 1995 – more than 12 years after the cause of action arose, is, we say statute barred pursuant to s. 9 of the Limitation Act 1953 (see *Nasri v. Mesah*). The action is unmaintainable and is rightly struck out ...
>
> (emphasis added)

[41] For ease of reference, the relevant factual timeline is summarised in the following table:

Plaintiffs	Paid in full	Last payment	Date of the SPAs	Supposed Date for the Delivery of Vacant Possession	Date limitation sets in (12 years for recovery of land)
1 & 2	Yes	28.02.2010	20.02.2000	20.02.2003	20.02.2015
	Yes	20.08.2007	20.02.2000	20.02.2003	20.02.2015
3 & 4	Yes	17.06.2009	20.08.1999	20.08.2002	20.08.2014
5	Yes	08.04.2009	22.06.1999	22.06.2002	22.06.2014
6	Yes	19.02.2008	26.05.2002	26.05.2002	26.05.2014
7	Yes	08.10.2007	20.02.2000	20.02.2003	20.02.2015
8	Yes	21.03.2008	20.09.1999	20.09.2002	20.09.2014
9	Yes	20.04.2009	20.03.2000	20.03.2003	20.03.2015
10	Yes	21.04.2008	10.06.1999	10.06.2002	10.06.2014
11	Yes	08.10.2002	20.03.1999	20.03.2002	20.03.2014
12	No	20.05.2008	20.04.1999	20.04.2002	20.04.2014
	No	04.05.2004	20.04.1999	20.04.2002	20.04.2014
13	No	05.02.2004	09.06.1999	09.06.2002	09.06.2014
14	No	10.12.2007	09.07.1999	09.07.2002	09.07.2014
15	No	30.01.2004	10.06.1999	10.06.2002	10.06.2014
16	No	23.08.2004	20.02.2000	20.02.2003	20.02.2015
17 & 18	No	28.12.2002	20.11.1999	20.11.2002	20.11.2014
19	No	10.07.2002	29.04.2000	29.04.2003	29.04.2015
20	No	20.02.2006	10.06.1999	10.06.2002	10.06.2014
21	No	Nov 2009	18.06.1999	18.06.2002	18.06.2014
22	No	20.07.2009	20.10.1999	20.10.2002	20.10.2014
23	No	June 2003	20.11.1999	20.11.2002	20.11.2014
24	No	21.04.2008	20.03.2003	20.03.2003	20.03.2015
25	No	08.10.2002	01.06.1999	01.06.2002	01.06.2014

[42] Hence, we are of the considered view that time starts to run from the supposed date for the delivery of vacant possession of the bungalow plots as agreed by the parties in their respective SPAs, which the defendant had breached.

[43] However unfortunate it was for the plaintiffs, we cannot override the provisions of the Limitation Act 1953 on equitable considerations. In *Majlis Peguam & Anor v. Tan Sri Dato' Mohamed Yusoff Mohamed* [1997] 3 CLJ 332; [1997] 2 MLJ 271, the Federal Court held that:

> *... there is no general judicial discretion, outside the Limitation Act, enabling the court to relieve a suitor from the provisions of the Limitation Act on the ground of hardship and the court cannot override the provisions of the Limitation Act on equitable considerations* (see also *Nathan s/o Arumugam v. Chin Jin Tse* [1982] 2 CLJ 555).
>
> (emphasis added)

[44] We pause here to note that even though the parties remain in contractual relationship, it does not mean that the period of limitation had not commenced. In *The Great Eastern Life Assurance Co Ltd v. Indra Janardhana Menon* [2005] 4 CLJ 717; [2006] 2 MLJ 209, Siti Norma Yaakob CJ (Malaya)(as she then was) in delivering the judgment of the Federal Court held as follows:

> The Court of Appeal had also reached an alternative finding that *so long as the parties remain in contractual relationship no period of limitation exists*. This is again *another attempt at creating uncertainty in the law governing limitation* of actions as the effect of such a finding is to *leave open the calculation when time begins to run*. This cannot be right as there is no basis for such a finding as *the Act itself has already set down the timetable as to when time begins to run* for the purpose of computing limitation periods.
>
> (emphasis added)

[45] It is also not the case that the plaintiffs had no complete cause of action against the defendant. It is just that the statute of limitation had limited the time for the plaintiffs to enforce their rights to obtain judicial reliefs or remedies. In *Julian Chong Sook Keok & Anor v. Lee Kim Noor & Anor* [2024] 5 CLJ 519; [2024] 3 MLJ 544, Her Ladyship Mary Lim FCJ in delivering the judgment of the Federal Court, held as follows:

> [34] *The statute of limitations thus serves to limit or provide for a limit in terms of time by which action in court or arbitration may be commenced to enforce rights, interests, benefits or to seek some relief or remedy. Upon expiration of the limitation period, the claim is barred; hence the phrase, 'time-barred'.*
>
> [35] *That bar, however, bars only the right to judicial relief or remedies but not the cause of action which remains complete and not extinguished.* Limitation merely takes away the judicial remedy as a defendant may choose not to raise limitation. Thus, until limitation is pleaded or raised as a defence (see s. 4 of Act 254), a plaintiff's cause of action is not regarded as time-barred.
>
> (emphasis added)

[46] To sum up, based on the foregoing reasons, we are of the considered view that the learned JC had erred in holding that the plaintiffs' earliest right of action to recover the respective bungalow plots accrued on 7 October 2020, *ie*, when the defendant filed its application to the High Court for leave to enter appearance and to file its defence against the plaintiffs' claim when there is evidence to show that the plaintiffs' right of action had accrued even earlier, *ie*, when the defendant failed to deliver vacant possession of the respective bungalow plots according to the terms of their respective agreements. Hence, we hold that the action filed by the plaintiffs in 2020 to recover the respective bungalow plots is time-barred.

Fraudulent Breach Of Trust

[47] We are also mindful of the fact that the plaintiffs had also pleaded that there was a fraudulent breach of trust on the part of the defendant against the plaintiff as can be seen in paras. 16 to 18 of the plaintiffs' statement of claim and para. 7 of the plaintiffs' reply to the defence.

[48] In our view, this claim would have allowed the defendant to circumvent the limitation period under the Limitation Act 1953. The law is clear that the limitation period under the Limitation Act 1953 is not applicable to an action brought by a beneficiary under a trust in respect of any fraud or fraudulent breach of trust. In particular, s. 22(1)(a) of the Limitation Act 1953 states that:

> Section 22. Limitation of actions in respect of trust property.
>
> (1) *No period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust*, being an action:
>
> (a) *in respect of any fraud or fraudulent breach of trust* to which the trustee was a party or privy; ...
>
> (emphasis added)

[49] In the present appeal, suffice to say that the learned JC had painstakingly gone through the evidence before holding that the plaintiffs had failed to prove that there was a fraudulent breach of trust on the part of the defendant as pleaded. This decision was not appealed against, and therefore it stands as it is. The same goes for the plaintiffs' claim for unjust enrichment against the defendant. Paragraphs 85 to 92 of the learned JC's grounds of judgment are referred to.

Conclusion

[50] In conclusion, after hearing all parties to this appeal and perusing all the appeal records, we have come to a unanimous decision that there are merits in this appeal.

[51] Therefore, we allow this appeal with no order as to cost.